DECISIONS OF THE SUPREME COURT OF THE UNITED STATES ON CONSTITUTIONAL QUESTIONS, 1911–1914

EMLIN McCLAIN

Iowa College of Law

As the last summary in the REVIEW of the decisions of the United States Supreme Court on constitutional questions included the cases at the October term, 1910–1911,[1] it may be desirable now under a few headings to group the cases which seem to be of fundamental importance decided during the three judicial years commencing in 1911 and concluding in 1914. Without any numerical summary (which would be difficult and of little value in view of the fact that many cases in which constitutional questions are raised by counsel and briefly referred to by the court are of no significance as indicating any new development or application of constitutional provisions) it may safely be said that the number of important cases in which difficult constitutional questions have been decided has during this period been unusually large. As the activity of Congress in pushing its legislative power constantly closer to the line of its constitutional authority increases, the number of cases in which the limits of such authority are necessarily involved must also increase. But it may further be suggested by way of rough generalization that the principles of constitutional law relating to other subjects on the boundary line between state and federal legislative powers has become reasonably well established, and comparatively few cases of importance relating to their application have recently been decided by the Supreme Court.

[1] *American Political Science Review* (1912), vol. vi, pp. 513–523.

EXERCISE OF POWERS BY FEDERAL GOVERNMENT

Some cases relating to the exercise by the federal government of its constitutional powers may well, however, be first noticed.

In exercising its power to establish a uniform rule of naturalization Congress in 1906 enacted a statute containing a provision for the cancellation of certificates of citizenship fraudulently and illegally procured,[2] and in the case of Luria v. United States[3] the question was raised whether this provision was applicable to certificates previously issued. The significant feature of the new provision was that if the alien to whom such certificate had been issued should within five years thereafter return to the country of his nativity or go to any foreign country and take permanent residence therein such act should be considered, *prima facie*, evidence of a lack of intention on his part to become a permanent citizen of the United States at the time of filing his application. The person to whom a certificate had been issued in 1894, soon after that date left the United States for South Africa and there remained a resident until the proceeding for the cancellation of his certificate was commenced in 1910, returning to the United States in the meantime only for a temporary purpose; and the Federal District Court in which the proceeding to cancel his certificate was instituted reached the conclusion as a matter of fact that the residence in South Africa was intended to be and was permanent in character and as a matter of law that under the presumption declared by the statute the certificate was therefore fraudulent and should be cancelled. This conclusion both as to fact and law the Supreme Court affirms on the ground that even during so long a period as five years the acts of the applicant for the certificate might be taken into account in determining his good faith in making it, and that as good faith intention to become a citizen of the United States was essential to the validity of the certificate issued to him, there was no unconstitutional deprivation of any right in subjecting a certificate issued before the passage of the statute to the test provided for therein.

[2] Act of June 29, 1906, Sec. 15, 34 Stat. 601.

[3] 231 U. S. 9.

The status of the Pueblo Indians and in general the nature of the supervision which the United States is justified in exercising over the Indians and their lands is subject of consideration in United States vs. Sandoval[4] which was a prosecution under the laws of the United States for introducing intoxicating liquor into the Indian country. The question considered was solely whether the Indian pueblos in New Mexico are "Indian country" but as bearing upon that question the court considers certain portions of the enabling act under which the State of New Mexico was admitted to the Union, pertinent provisions of the act being that the convention adopting a state constitution should provide by an ordinance irrevocable without the consent of the United States and the people of said State that the introduction of liquors into Indian country including "all lands now owned or occupied by the Pueblo Indians" was forever prohibited, and that all the laws of the United States prohibiting the introduction of liquor into the Indian country should apply to the Pueblo Indians and their lands. The validity of these provisions of the enabling act as against the contention that Congress cannot deprive a newly admitted State by compact, although declared to be irrevocable, of its right to regulate its internal police affairs, nor thus reserve to itself the right to regulate, manage and control private property in such State is met with the suggestion that proper subjects of Congressional legislation may be regulated by an enabling act deriving its force, not from its nature as a compact, but from the authority under which it is enacted and that if the subject matter was one for Congressional legislation the form of the enactment was immaterial. As to whether the status of the Pueblo Indians and their lands is such that Congress may prohibit the introduction of liquors into such lands is therefore found to be the vital question in the case, and after a consideration of the history of the relations of the Pueblo Indians to Mexico before the termination of Spanish sovereignty and later to the government of the territory of New Mexico, the court reaches the conclusion that without regard to whether these Indians have become citizens of the United States they require

[4] 231 U. S. 28.

special consideration and protection like other Indian communities, and that not only under the constitutional authority to regulate commerce with Indian tribes, but also under a power arising from the necessary exercise on the part of the federal government of the right to subject the Indians to guardianship for their own protection and in their own interest, Congress was authorized to enact the regulations in question For these reasons the court holds that the legislation in question does not encroach upon the police power of the State or disturb the principle of equality among the States.[5] Under quite similar reasoning the court holds in United States vs. Pelican[6] that Congressional legislation for the punishment of crimes committed against Indians upon lands constituting part of an Indian reservation at the time of the admission of a State into the Union but subsequently allotted to the Indians in severalty, continued valid and effectual for the conviction of a white man for the murder of an Indian on such lands.

RELATIONS OF THE STATES TO THE UNITED STATES

That there was no purpose in the case of United States vs. Sandoval, supra, to abandon the rule often announced that the powers of a State after admission to the Union are not limited or restricted by any compact embodied in the enabling act is clear from the decision in Alabama vs. Schmidt,[7] that school lands conveyed to a State in connection with its admission to the Union become absolutely and without limitation the property of the State, to be managed by it or sold as it may see fit without further grant of authority.[8]

[5] The nature and extent of the power of the federal government to legislate with reference to the introduction of intoxicating liquors into an Indian reservation, although it may be within the limits of a State, is discussed with the same result in Perrin vs. United States, 232 U. S. 478.

[6] 232 U. S. 442.

[7] 232 U. S. 168.

[8] See also Cincinnati vs. Louisville & Nashville R. Co., 223 U. S. 390, in which the court holds that the compacts embodied in the Ordinance of the Northwest Territory ceased to be obligatory on the States carved from that Territory after their admission to the Union.

An important question as to the relation of the States to the United States is involved in a line of decisions as to the power of a State to impose upon a foreign corporation, as a condition of its right to do business in the State, that it shall not remove causes to the federal court. In a suit by a citizen of Oklahoma brought in the court of that State against a railroad company, incorporated in another State, the defendant asked a removal on proper grounds to the federal court, and in pursuance of authority attempted to be conferred upon him by a state statute, the Secretary of State declared the license of the defendant company to transact business in the State to be forfeited and revoked. The conclusions reached by the Supreme Court in Harrison vs. St. Louis & S. F. R. Co.[9] as the result of many previous cases is that the statute is invalid as plainly and obviously forbidding a resort to the federal courts on the ground of diversity of citizenship between such parties. In the later case of Missouri Pacific Ry. Co. vs. Larabee[10] the same proposition is reasserted with the result that a state statute is held unconstitutional which purported to allow the taxation as damages in an action determined in the state court of attorney's fees for prosecuting a writ of error to the Supreme Court of the United States, should such a proceeding be resorted to by the unsuccessful party, no such allowance of attorney's fees being authorized by the federal statutes.

The old question as to the right of a State to tax the instrumentalities through which the federal government exercises its powers was raised in a case in Minnesota in which the Supreme Court of that State sustained the validity of a state tax on bonds issued by municipalities in the Indian Territory and the Territory of Oklahoma while those territories were in existence. On appeal to the Supreme Court of the United States the judgment of the Minnesota court was reversed[11] on the ground that the subsequent action of Congress in erecting the territories into a State with or without an assumption by the new State of the obli-

[9] 232 U. S. 318.
[10] 234 U. S. 459.
[11] Farmers, etc., Bank vs. Minnesota, 232 U. S. 516.

gations of the former federal agency would be in effect to impair the obligations of a contract. This result is predicated on the general proposition that not only the territorial governments but the municipalities of the territories were instrumentalities and agencies of the Federal Government with whose operations the States were not permitted to interfere by taxation or otherwise, the issuing of municipal bonds being the performance of a governmental function.

The duty of the United States to guarantee to every State a republican form of government is considered in Pacific Telephone Co. vs. Oregon,[12] in which the constitutionality of a statute imposing a tax on telegraph and telephone companies was questioned on the ground that it had been adopted under provisions of the state constitution authorizing legislation by initiative. The contention of the appellant was that it is an essential characteristic of a republican form of government that the legislative power be exercised by a legislative department composed of representatives of the people chosen by election. It was also contended that the enforcement of a tax imposed otherwise than in the exercise of legislative power constituted a violation of the guarantee as to due process of law. The court reaches the conclusion that the argument as to due process of law is necessarily involved in the question as to a republican form of government and as to that question after restating at length the discussion in the historical case of Luther vs. Borden,[13] announces its conclusion in conformity with the reasoning of that case that the determination whether a state government is republican in form is political and not judicial in its character, and points out that the assault which the contention advanced by the appellant makes "is not on the tax as a tax but on the State as a State," and that such contention is made, "not for the purpose of testing judicially some exercise of power assailed, on the ground that its exertion has injuriously affected the rights of an individual because of repugnancy to some constitutional limitation, but to demand of the State that it establish its right to exist as a State,

[12] 223 U. S. 118.

[13] 7 Howard, 1 (1849).

republican in form." This case furnishes the final answer to the question raised as to the validity of the amendment to the constitution of Oregon, adopted in 1902, authorizing the exercise of legislative power by the people under the initiative and referendum, which as against the claim that it provided for a government not republican in form was sustained by the Supreme Court of that state in Kadderly vs. Portland.[14]

PROTECTION OF DEFENDANT IN CRIMINAL PROSECUTION

The guaranty of the Fourth Amendment of the Federal Constitution against unreasonable searches and seizures was involved in Weeks vs. United States.[15] In a district court of the United States Weeks was charged with violation of the federal statute prohibiting the use of the mails for the purpose of transporting lottery tickets and complained of the introduction in evidence against him of certain papers including lottery tickets and letters in respect to the lottery which had been taken by the United States marshal on a search of his private room without warrant. The validity of this method of securing evidence had been questioned by an application made by the defendant to the trial court preliminary to the trial in which he had set forth the facts as to the method in which the evidence had been procured and asked that the officer be required to return to him the papers thus taken, which application the court refused. The holding in the Supreme Court is that such application should have been granted and that there was reversible error in afterwards admitting such papers in evidence over the defendant's objection. The court recognizes the rule frequently announced that on the trial of a criminal case the court is not required to enter into a col-

[14] 44 Oregon 118 (1903). The validity of a city ordinance adopted by referendum was sustained in the case of Pfahler, 150 Cal. 71 (1907). The same conclusion as to the validity in this respect of city ordinances was reached in Eckerson vs. Des Moines, 137 Iowa 452; while a different conclusion was announced in the case of Farnsworth, 61 Tex. Crim. Rep. 342, 135 S. W. 535, 33 L.R.A. (N. S.) 968 (1911). Constitutional provisions for legislation by the initiative and referendum have been sustained in the cases of Hartig vs. Seattle, 53 Wash. 432 (1909), and Ex parte Wagner, 21 Okla. 33 (1908).

[15] 232 U. S. 383.

lateral investigation as to the method in which competent evidence has been secured, but distinguishes the present case on the ground that as the defendant had made a seasonable application for the return to him of the instruments of evidence taken in direct violation of his constitutional rights, the subsequent admission of such instruments in evidence against him was a prejudicial error for which a reversal should be granted.

INTERSTATE COMMERCE

While there have been many cases decided involving questions of interstate commerce and therefore dependent in a general way on the constitutional provision giving Congress power to regulate commerce among the several States, such cases for the most part involve only the construction of statutes, the constitutionality of which is conceded. A few questions have arisen, however, in which the court has been required by the nature of the case to go back to the fundamental propositions as to what is commerce among the States and to what extent the grant of such power excludes state legislation.

Of the cases defining interstate commerce, by far the most important are the Pipe Line Cases,[16] in which certain companies, owning pipe lines for the transportation of oil from one State to another, contested the validity of the provision of the Hepburn Act[17] making the Interstate Commerce Act applicable to any corporation or person engaged in the transportation of oil by means of pipe lines. In the exercise of the authority thus conferred the Interstate Commerce Commission required such companies to file with the Commission schedules of their rates and charges and suit was brought in the Commerce Court to annul this order. The showing was that the companies contesting the validity of the order of the Commissioners were all engaged in the transportation of oil through pipe lines owned or controlled by them only in case that the oil to be transported was sold to the company transporting it on terms more or less dictated by itself, save that one of the companies was engaged only in transporting

[16] 234 U. S. 548.

[17] Act of June 29, 1906, 34 Stat. 584.

through its pipe lines oil produced by its own wells in one state to its refinery in another state. The fundamental contention seems to have been that as the statute amended regulates only common carriers it could not be applied to companies engaged only in the transportation of their own property; but this contention is met with the assertion by the court that the statutes mean no more than that those who are common carriers in substance must become such in form, for in fact they afford the only practicable means of shipping oil from large interior oil fields to the sea coast for disposal. The reasoning of the case seems to be that those who see fit to engage in the transportation of oil by pipe lines from one state to another may be prohibited from doing so otherwise than as common carriers. The majority of the court was also of the opinion that the company engaged in transporting oil from its own oil wells in one state to its refinery in another was not within the provisions of the act. The chief justice on this point differed from the majority, being of the opinion that while the business of such company in the transportation of oil was interstate commerce within the meaning of the statute, the statute could not be made applicable to it without violating the due process clause of the Fifth Amendment, since to apply it in such case "would necessarily amount to a taking of the property of the company without compensation." In a dissent Mr. Justice Kenna insists that the companies did not devote their lines to a public use when they were used only in the transportation of oil which the companies had purchased and that they could not be compelled by legislation to abandon the use of such lines otherwise than as common carriers. The result of the majority opinion is apparently to authorize legislation declarative of a public use based on economic considerations in respect to privately owned property employed solely in the private business of the owner.

The subordination of state regulations to regulations imposed on common carriers by federal statutes enacted under the power to regulate interstate commerce is emphasized in the Shreveport case,[18] involving the validity of an order of the Interstate Com-

[18] Houston, etc., R. Co. vs. United States, 234 U. S. 342.

merce Commission that higher rates should not be charged for interstate shipments than were charged by the carriers for corresponding service under similar conditions for transportation on their lines between points in the same state. Conceding that the rates between points in the same state were subject to state regulation, the court reached the conclusion that nevertheless charging a lower rate for the carriage of goods between points in the state than that which the carriers were authorized to charge for same transportation from a point without the state to a point within the state was a discrimination against interstate commerce and it says that "wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves the control of the other, it is Congress and not the state, that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority and the state, and not the Nation, would be supreme within the national field." And further: "This is not to say that Congress possesses the authority to regulate the internal commerce of a state, as such, but that it does possess the power to foster and protect interstate commerce, and to take all measures necessary or appropriate to that end, although intrastate transactions of interstate carriers may thereby be controlled." The result of the case seems to be that a common carrier engaged in interstate business and complying with the rates fixed for such business by the Commission may be prohibited from discrimination against its interstate business by charging a lower rate for intrastate business, though the latter rate is fixed by the state, so as to induce shipments to be made between points in the state which would otherwise be made to points outside of the state. Two justices dissent from the court's opinion. It is to be noted that the court cites without comment the Minnesota Rate Cases,[19] in which state rates affecting only intrastate commerce were sustained as against the contention that they resulted in a discrimination against interstate shipments. The distinction between the cases no doubt is that in the Minnesota Rate Cases the question was primarily

[19] 230 U. S. 352.

as to the validity of state legislation, while in the last case the question was directly involved as to the validity of an order of the Interstate Commerce Commission made in the exercise of powers conferred upon it.

Nevertheless the proposition is still adhered to that state regulations of the business of common carriers are valid, although indirectly affecting interstate commerce, so long as the federal power has not been exercised as to the same subject matter; for it is held in Atlantic Coast Line R. Co. vs. Georgia[20] that a state statute requiring railroad companies to equip their locomotives with electric headlights can be enforced although such locomotives are being employed as instrumentalities of interstate commerce.

Notwithstanding the decision in Adams Express Co. vs. Croninger[21] and many cases following it that in view of the insertion in the Interstate Commerce Law by the Carmack Amendment to the Hepburn Bill of the provision that common carriers engaged in interstate commerce shall issue through bills of lading, state statutes are invalid as to interstate commerce which prohibit the issuance of bills of lading containing a limitation of liability to the value stated therein by which the rate of compensation is determined, or forbid a short limitation of time for making claims for damages,[22] nevertheless in Missouri, K. & T. R. Co. vs. Harris,[23] the court sustains as still valid and not superseded with reference to interstate commerce by the Carmack Amendment, a state statute imposing attorney's fees as a part of the damages which may be recovered for breach of the carrier's duty.

CONTRACT OBLIGATIONS AND OTHER VESTED RIGHTS

The distinction between the police regulation of the exercise of rights conferred by a franchise and the complete abrogation of a franchise which is not in itself in excess of the power of the municipality to grant is pointed out in Grand Trunk Western

[20] 234 U. S. 280.

[21] 226 U. S. 491. The cases following this are numerous. They are cited in Missouri, K. & T. R. Co. vs. Harris, 234 U. S. 412.

[22] Missouri, K. & T. R. Co. vs. Harriman, 227 U. S. 657.

[23] 234 U. S. 412.

R. Co. vs. South Bend,[24] and a state decision upholding the partial repeal of an ordinance granting such a franchise is reversed (two justices dissenting). Likewise in Owensboro vs. Cumberland Telephone Co.[25] an ordinance granting a perpetual franchise for the use of the streets of a city for telephone purposes is sustained against the contention that in the granting of such a franchise without limitation there is an implied reservation of a power to repeal. From this conclusion, four justices dissent.

DUE PROCESS AND EQUAL PROTECTION

As is usual in reviewing the decisions of the Supreme Court involving constitutional questions, the large majority are found to relate to the limitations on state legislative power found in the provision of the Fourteenth Amendment guaranteeing due process of law and the equal protection of the laws. Of these, however, few announce any new principles or rules of decision, though some interesting illustrations of rules previously announced are to be found.

The extent to which the state may go in the regulation of private business without transgressing the limits of due process of law or the equal protection of the laws is the subject of the decision in German Alliance Ins. Co. vs. Kansas,[26] involving the right of a state to regulate fire insurance rates. Conceding that the right to prosecute the business of insurance is a natural right, receiving no privilege from the state, voluntarily entered into and concerning only personal contracts for indemnity, the majority of the court holds that such private business is in its nature nevertheless affected with a public interest and therefore subject to state regulation as to rates. Three judges dissent on the ground that under the Munn Case[27] which furnishes a landmark, the business must be affected with a public interest and the property employed in its prosecution must be devoted to a public use, and without the concurrence of public interest

[24] 227 U. S. 544.
[25] 230 U. S. 58.
[26] 233 U. S. 389.
[27] 94 U. S. 113.

and the employment of property devoted to public use, the right to fix rates or prices does not exist; and that as the insurance business involves only the making of contracts it is not subject to the rate-making power of the state. That the police power does not, however, include the power to interfere with the use of property purely private in its nature for the promotion of the general welfare or pecuniary interests of the owners of other property is illustrated by the case of Eubank vs. City of Richmond[28] in which it is held (reversing the decision of a state court) that an ordinance fixing the building line on private property abutting a street according to the wishes of the majority of the property owners is not valid as against an owner who is thereby prejudiced. As to forms of business which are in their nature subject to police regulation such as the sale of intoxicating liquors, the legislative power of the state is not subject to judicial review on the ground of wisdom or reasonableness and it is therefore held in Purity Extract Co. vs. Lynch[29] that a state statute having for its general object the prohibition of the sale of malt liquors was not unconstitutional although it might result in the prohibition of the sale of liquor not in fact intoxicating or otherwise injurious. Likewise it was held in Hammond Packing Co. vs. Montana[30] that a state might forbid the manufacture of oleomargarine without violating the due process or equal protection provisions.

That the right to make contracts may be interferred with in the exercise of the police power without infringement of due process of law is decided in Schmidinger vs. Chicago[31] upholding the validity of a statute regulating the weight of loaves or bread offered for sale; and in Sturges & Burn Mfg. Co. vs. Beauchamp,[32] sustaining a state statute prohibiting the employment of persons of tender years in dangerous occupations. In Erie R. R. Co. vs. Williams[33] the court, following many previous cases, again sus-

[28] 226 U. S. 137.
[29] 226 U. S. 192.
[30] 233 U. S. 331.
[31] 226 U. S. 578.
[32] 231 U. S. 320.
[33] 233 U. S. 685.

tains the validity of a state statute regulating the payment of wages to employees, with the pertinent suggestion that the employer cannot complain that such a statute interferes with freedom of contract on the part of the employee. Such a statute applicable only to particular classes of employers has also been sustained as against the objection that it was not applicable to other employers who might improperly engage in similar practices.[34]

That the guarantee of equal protection is not infringed by a classification which has regard to the evil to be remedied although it results that similar evils are not reached is illustrated by the case of International Harvester Co. vs. Missouri[35] in which a state antitrust act was sustained, although it did not apply to labor organizations nor to purchasers as distinct from sellers combining in restraint of the freedom of trade. But in Smith vs. Texas[36] it is held that equal protection of the law is denied by a state statute so fixing the qualifications for pursuing the business of a railroad conductor as to exclude from such employment persons equally qualified with those who by statute are permitted to pursue it. On the other hand in Patsone vs. Pennsylvania[37] a state statute was sustained which made it unlawful for any unnaturalized foreign born resident to kill any wild bird or animal and in furtherance of this general purpose, declared it "unlawful for such foreign born person to own or be possessed of a shot gun or rifle," the contention as to discrimination being met with the suggestion that the state legislature could not be assumed to have acted without warrant in making a classification to cover the peculiar source of the evil which it is desired to prevent.

[34] Keokee Coke Co. vs. Taylor, 234 U. S. 224.
[35] 234 U. S. 199.
[36] 233 U. S. 630.
[37] 232 U. S. 138.